

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) or Automated Export System (AES) record is filed in accordance with the requirements of the Foreign Trade Statistics Regulations (15 CFR part 30), except that an SED or AES record is not required when any of these commodities is exported by U.S. airlines to their own installations and agents abroad for use in their aircraft operations.

(3) *Applicable commodities.* This paragraph (c) applies to the following commodities, subject to the provisions in paragraph (c)(1) and (c)(2) of this section:

NOTE TO PARAGRAPH (c)(3) OF THIS SECTION: Fuel and related commodities for shipment to vessels or planes of U.S. or Canadian registry as described in this License Exception must be shipped under the short supply License Exception SPR (see § 754.2(h) of the EAR);

- (i) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements;
- (ii) Medical and surgical supplies;
- (iii) Food stores;
- (iv) Slop chest articles;
- (v) Saloon stores or supplies; and
- (vi) Equipment and spare parts.

[61 FR 12678, Mar. 25, 1996. Redesignated and amended at 61 FR 64274, 64283, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996; 65 FR 38150, June 19, 2000; 66 FR 42110, Aug. 10, 2001; 68 FR 50472, Aug. 21, 2003; 69 FR 23628, Apr. 29, 2004]

§ 740.16 Additional permissive reexports (APR).

This License Exception allows the following reexports:

(a) *Reexports from Country Group A:1 and cooperating countries.* Reexports may be made from Country Group A:1 or from cooperating countries, provided that:

(1) The reexport is made in accordance with the conditions of an export authorization from the government of the reexporting country;

(2) The commodities being reexported are not controlled for NP, CB, MT, SI, or CC reasons; and

(3) The reexport is destined to *either*:

(i) A country in Country Group B *that is not also included in Country Group D:2, D:3, or D:4*; Cambodia; or Laos; and

the commodity being reexported is both controlled for national security reasons and not controlled for export to Country Group A:1; or

(ii) A country in Country Group D:1 (National Security) (see Supplement No. 1 to part 740), other than Cambodia, Laos, or North Korea and the commodity being reexported is controlled for national security reasons.

(b) *Reexports to and among Country Group A:1 and cooperating countries.* Reexports may be made to and among Country Group A:1 and cooperating countries, provided that eligible commodities are for use or consumption within a Country Group A:1 (see Supplement No. 1 to part 740) or cooperating country, or for reexport from such country in accordance with other provisions of the EAR. All commodities are eligible except those controlled for nuclear nonproliferation reasons or missile technology reasons.

(c) Reexports to a destination to which direct shipment from the United States is authorized under an unused outstanding license may be made under the terms of that license. Such reexports shall be recorded in the same manner as exports are recorded, regardless of whether the license is partially or wholly used for reexport purposes. (See part 762 of the EAR for recordkeeping requirements.)

(d) Reexports of any item from Canada that, at the time of reexport, may be exported directly from the United States to the new country of destination under any License Exception.

(e) Reexports (return) to the United States of any item. If the reexporting party requests written authorization because the government of the country from which the reexport will take place requires formal U.S. Government approval, such authorization will generally be given.

(f) Reexports from a foreign destination to Canada of any item if the item could be exported to Canada without a license.

(g) Reexports between Switzerland and Liechtenstein.

(h) Shipments of foreign-made products that incorporate U.S.-origin components may be accompanied by U.S.-origin controlled spare parts, provided that they do not exceed 10 percent of

the value of the foreign-made product, subject to the restrictions in § 734.4 of the EAR.

(i) Reexports to Sudan of items controlled by ECCNs 2A994; 3A992.a; 5A991.f; 5A992; 6A991; 6A998; 7A994; 8A992.d, .e, .f, and .g; 9A990.a and .b; and 9A991.d and .e. In addition, items in these ECCNs are not counted as controlled U.S. content for purposes of determining license requirements for U.S. parts, components, and materials incorporated in foreign-made products. However, the export from the United States to any destination with knowledge that they will be reexported directly or indirectly, in whole or in part to Sudan is prohibited without a license.

(j) Reexports of items controlled by NP Column 1 (see Supplement No. 1 to part 774 of the EAR) to, among, and from countries described in Country Group A:4 (see Supplement No. 1 to part 740), except:

(1) Reexports from countries that are not identified in Country Group A:1 of items that are controlled for NS reasons to destinations in Country Group D:1; and

(2) Reexports to destinations in Country Group E:2 and Country Group D:2.

[61 FR 12768, Mar. 25, 1996. Redesignated at 61 FR 64274, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996, and amended at 62 FR 25458, May 9, 1997; 63 FR 42228, Aug. 7, 1998; 65 FR 38150, June 19, 2000; 65 FR 60855, Oct. 13, 2000; 67 FR 10614, Mar. 8, 2002]

§ 740.17 Encryption commodities and software (ENC).

Subject to the eligibility criteria and restrictions described in paragraphs (a), (b) and (f) of this section, License Exception ENC is available for the export and reexport of: commodities and software controlled by ECCNs 5A002.a.1, .a.2, .a.5, and .a.6, 5B002, and 5D002 that do not meet the “mass market” criteria of the Cryptography Note (Note 3) of Category 5, part 2 (“Information Security”) of the Commerce Control List (Supplement No. 1 to part 774 of the EAR); technology controlled by ECCN 5E002; and certain technical assistance as described in § 744.9 of the EAR. The initial export or reexport of an encryption commodity or software

under paragraphs (b)(2) or (b)(3) of this section is subject to a 30 day waiting period, as described in paragraph (d)(2) of this section. In addition, persons exporting or reexporting under paragraphs (a), (b)(2) or (b)(3) of this section must file the semi-annual reports required by paragraph (e) of this section. Review request procedures for encryption items eligible for License Exception ENC are described in paragraph (d) of this section (e.g., for items that have not previously been reviewed, or for items that have been reviewed but for which the cryptographic functionality has been changed). See § 742.15(b)(2) of the EAR for similar review procedures for “mass market” encryption commodities and software.

(a) *Exports, reexports, and technical assistance to countries listed in Supplement No. 3 to this part.* This paragraph (a) authorizes export or reexport of items controlled under ECCNs 5A002.a.1, .a.2, .a.5, or .a.6, 5B002, 5D002, or 5E002, and provision of technical assistance described in § 744.9 of the EAR, to end-users in countries listed in Supplement No. 3 to part 740 of the EAR. This paragraph also authorizes exports or reexports to foreign subsidiaries and offices of end-users headquartered in Canada or in countries listed in Supplement No. 3 to part 740. In addition, the transaction must meet the terms of paragraphs (a)(1), (a)(2), or (a)(3) of this section.

(1) *Internal development of new products.* No prior review is required for exports or reexports of U.S. origin encryption items or related technical assistance under this paragraph (a) to private sector end-users that are headquartered in Canada or in countries listed in Supplement No. 3 to part 740, for internal use for the development of new products by those end-users and their offices or subsidiaries. Any encryption item produced or developed with an item exported or reexported under this paragraph (a)(1) is subject to the EAR and requires review and authorization before any sale or retransfer outside of the private sector end-user that developed it. In this paragraph (a)(1), private sector end-user means:

(i) An individual who is not acting on behalf of any foreign government; or